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DEPARTMENT OF STATE

ACTION MEMORANDUM

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CONFIDENTIAL

TO: P - Mr. Newsom

FROM: NEA - Harold H. Saunders

SUBJECT: Renewal of USS Liberty Negotiations

ISSUE FOR DECISION

To determine the amount the U.S. Government should seek from the Government of Israel in compensation for the physical damage caused by the Israeli attack on USS Liberty during the June, 1967 war.

BACKGROUND

Since the Israeli attack on the Liberty, in which 34 crewmen were killed and 164 injured, allegations have periodically been made that the action was deliberate, despite the Israeli claim that the communications ship was fired upon in error. The U.S. Naval Board of Inquiry did not reach a determination of the reasons for the incident, and the Department has no information to support the various allegations put forward. In any case, the Government of Israel immediately accepted responsibility for the attack and agreed to make amends for the loss of life and material damage. In 1967, after negotiations, the GOI paid in full our claim for $3,323,500 to the families of the men killed, and in 1969 the GOI paid in full our claim for $3,452,275 on behalf of the injured crewmen.

On July 1, 1968, the USG sent the GOI a note (Tab A) pressing a claim for $7,644,146 estimated by the Navy to be the cost of repairs to Liberty (the Liberty was never repaired, so the exact cost is unknown). The GOI initially denied responsibility

for payment of this amount, but offered to pay a nominal sum, which we found unacceptable. Although for a variety of reasons we did not press our claim between 1968 and 1978, we maintained our position that full compensation was required. In February of 1978 we again sent the GOI a note, asking that negotiations begin leading to a payment by the GOI of a sum sufficient to cover the damages to the ship, and quoting the earlier $7.6 million damage estimate. In May of 1978 the GOI replied, reserving Israel's legal position but agreeing to open negotiations. (This exchange of notes is at Tab B.)

The opening of negotiations has been delayed subsequently because of our concentration on the Camp David peace process and the need to coordinate preparations and positions with two other agencies, the Navy and Treasury Departments.

NEW DEVELOPMENTS

Our consultations with Navy and Treasury have resulted in agreement that the most appropriate opening position should be calculated by assuming that repairs were made in July, 1967 for $7,644,142, and then by adding a charge for interest on this principal on the basis of the compounded annual Treasury bill rates for the period between July, 1967 and the time compensation was paid (for purposes of this presentation, January 1, 1980). Using such a formulation, the total claim would be $16,211,696.30, of which $7,644,142 is principal and $8,567,554.30 is interest. (Treasury's method of calculation is at Tab C.)

The Legal Adviser agrees that a principal-plus-interest approach is a sound legal precedent, but points out that as a practical matter we have never succeeded in obtaining interest on an international claim in the post-World War II era.

We believe our fallback position should ask for full compensation of the principal--the $7,644,142 damage estimate. The Legal Adviser notes that we have settled many international claims for considerably less than 100%

of principal, but a particularly apt precedent in this case would be the 1976 settlement with Egypt in which the GOE paid the full value ($10 million) of Nasser-era nationalization claims. A later agreement with Egypt also provided for full compensation for USG and other claims in the amount of $5.4 million. We agreed with the Egyptians on three-year and five-year payment schedules on these two claims. We would propose to offer the Israelis the option of a three-year schedule, citing the Egyptian precedent, but would recommend that we be authorized to fall back to a five-year schedule.

The Israelis undoubtedly will still hope to resolve the claim for a nominal sum. We expect they will reject an opening bid of $16.2 million, arguing that international claims are rarely settled for principal plus interest, and that their economic situation and high defense expenditures make payment of any such amount unacceptable. We may find the Israelis unwilling to accept our fallback position as well, though the possibility of repayment over five years would enhance prospects for getting agreement. In the event of a deadlock on our fallback position, we would have to consider whether to accept less than $7,644,142 as a settlement of this protracted claim.

We have Treasury Department Assistant Secretary Bergsten's concurrence in this proposed approach (see memorandum at Tab D). The Navy Department has been helpful in providing information necessary to the presentation of the claim but has taken the position that it is up to the State Department to determine the amount we would seek from Israel and our negotiating tactics.

RECOMMENDATION:

That you authorize NEA, in coordination with L and representatives of the Navy and Treasury Department, to commence negotiations with the GOI, through Embassy Tel Aviv, following the strategy outlined above: an opening presentation of $16,211,696.30, representing principal plus interest.

APPROVE ✓ (9/7) DISAPPROVE _____

That you authorize us to fall back, after a best effort has been made to get Israeli agreement to the maximum claim sum of $16,211,696.30 or a figure moderately scaled down from that, to a minimum of $7,644,142, i.e. the Navy's estimate of what repairs would have cost had they been made in 1968.

APPROVE ✓ (8/7) DISAPPROVE _____

Additionally, that you authorize establishment of a repayment schedule of three years, with a fallback position of five years.

APPROVE ✓ (8/7) DISAPPROVE _____

Attachments:

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Tab A: Diplomatic note to GOI, July, 1968.
Tab B: Exchange of notes, May, 1968.
Tab C: Treasury's calculation.
Tab D: Memorandum from Assistant Secretary Bergsten

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